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WASHINGTON

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Honorable Edward J. Markey Chairman Subcommittee on Telecommunications and Finance House of Representatives 316 Ford House Office Building Washington, D.C. 20515-6119

Dear Chairman Markey:

Thank you for your letter regarding implementation of the programming access and rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992.

Your letter addresses various Sections of the 1992 Cable Act. The 1992 Cable Act adds new Section 628 to the Communications Act to prohibit unfair or discriminatory practices in the sale of video programming. The stated intent of this provision is to foster the development of competition to cable systems by increasing other multichannel video programming distributors' access to programming. In its First Report and Order, adopted April 1, 1993, the Commission adopted regulations to implement Section 628. The 1992 Cable Act also adds new Section 623 to the Communications Act, which provides for regulation of the rates of cable services other than pay-per-view or per-program offerings. In its Report and Order and Further Notice of Proposed Rulemaking, also adopted April 1, 1993, the Commission adopted regulations to implement Section 623. In both instances, the Commission endeavored to follow the plain language of the statute, as informed by the legislative history, and to effectuate its reading of Congressional intent based on its own judgement and expertise, in light of all comments received.

With respect to the implementation of the provisions of Section 628 regarding access to programming, you are especially concerned that the burden of proof in cases involving discriminatory pricing lies with the vertically integrated program provider. In its <u>First Report and Order</u>, the Commission adopted a streamlined complaint process. The Commission's rules will encourage programmers to provide relevant information to distributors before a complaint is filed with the Commission. In the event that a programmer declines to provide such information, it will be sufficient for a distributor to submit a sworn complaint alleging, based upon information and belief, that an impermissible price differential exists. The burden will be placed on the programmer to refute the charge, with reference to the factors set forth in the statute, which generally involve (1) cost differences at the wholesale level in providing a program service to different distributors; (2) volume

With respect to rates, you are concerned that the Commission adequately regulate the rates of tiers above the basic tier, and that the Commission look for guidance to the rates charged by cable systems facing competition. As you know, the Commission adopted rate regulations for cable systems on April 1, 1993, which, as a first step, could mean total savings to consumers of about one billion dollars. The Commission has developed a benchmark formula for cable rates that will enable regulators to approximate what the competitive rates should be for a given cable system with particular characteristics, and to require a noncompetitive system to reduce its rates to this level or by ten percent, whichever is less. Thus, as you suggest, the rate reductions that we will order will be based on competitive levels. In addition, we will be investigating the rates of those operators that remain significantly above the benchmark after these first reductions are ordered to determine whether they should be reduced even further. Moreover, the same benchmark formula applies to both basic and cable programming service rates, thus addressing your concerns regarding regulation of rates in tiers the basic tier.

The texts of these decisions will be released shortly. I have enclosed copies of news releases that include detailed summaries of both items. Thank you for your interest in this matter.

Sincerely,

James H. Quello

Chairman

Enclosures

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U.S. Souse of Representatives

Committee on Energy and Commerce

SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

Mashinaton. №€ 20515-6119 March 22, 1993

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The Honorable James H. Quello Acting Chairman Federal Communications Commission 1919 M Street, N.W. Washington, DC 20554

Dear Chairman Quello:

I continue to be concerned by the actions of some cable companies in the weeks leading up to the issuance of FCC regulations to implement the Cable Television Consumer Protection and Competition Act of 1992. I would like to reiterate my concerns regarding two very important provisions of the law.

The two principal objectives of Congress in passing the Cable Act were to increase competition in the video marketplace and to control cable rates for consumers in the absense of effective competition.

Access to programming is one of the principal provisions in the Cable Act designed to increase competition to local cable monopolies. As you are aware, the provision prohibits vertically integrated cable programming services from discriminating among multichannel video providers in price, terms, and conditions in the sale and delivery of programming. The burden in proving that price differences are not discriminatory lies with the vertically integrated program provider who must demonstrate that differences in price meet one of four specific exemptions in the law. I am

The Honorable James H. Quello March 22, 1993 Page 2

The legislative history lays out the intent of Congress with regard to these fundamental provisions. The Subcommittee will closely review the regulations promulgated by the FCC to ensure that such regulations are consistent with Congressional intent.

I look forward to working with you and your colleagues on the Commission on these important issues, and I thank you for your attention to my concerns.

Sincerely,

Edward J. Markey

Chairman